

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Alliance Companies, et al.)	Docket No. EL02-65-003,
)	-004, -005
Ameren Services Company)	Docket No. EL02-65-006

**COMMENTS OF THE
ILLINOIS COMMERCE COMMISSION**

Pursuant to Rule 211 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.211, the Illinois Commerce Commission (“ICC”) hereby submits comments in the above-captioned proceedings in response to separate filings submitted on May 28 by Ameren Services Company (“Ameren”), American Electric Power Company (“AEP”), Commonwealth Edison Company (“ComEd”), Dayton Power & Light Company (“DP&L”), First Energy Corporation (“First Energy”), Illinois Power Company (“IP”), and Northern Indiana Public Service Company (“NIPSCO”), (collectively “Alliance Companies”).

I. BACKGROUND

On April 25, 2002, the Commission issued an order in Docket No. EL02-65-000 addressing a request for declaratory order by the Alliance Companies and National Grid USA (“National Grid”). The request for declaratory order sought Commission guidance regarding,

among other things, the allocation of RTO functions between a regional transmission organization (“RTO”) and an independent transmission company (“ITC”) operating in tandem. The order directed the Alliance Companies to make a compliance filing detailing which RTO they intend to join, either collectively or as individuals, by May 28, 2002.¹

On May 28, 2002, each of the Alliance Companies submitted a separate filing to comply with the Commission’s April 25 order. Ameren, First Energy and NIPSCO indicated that they intend to commit their transmission systems to the Midwest ISO, either as an individual transmission owner or part of an ITC. Conversely, AEP, ComEd, DP&L and IP intend to commit to PJM, either as an individual transmission owner or as part of an ITC.

The Commission issued separate notices of the Alliance Companies’ compliance filings on June 7 (with the exception of IP, NIPSCO, and DP&L whose filings were not noticed at the time of this ICC filing), setting June 18 as the deadline for comments.

II. POSITION AND RECOMMENDATION

The current record in this case does not support a definitive conclusion regarding that proposed RTO configuration will serve the public interest in the Midwest. The ICC believes that the voluntary individual RTO participation decisions of the transmission-owning utilities in the Midwest have produced sub-optimal RTO configuration outcomes for both the Midwest ISO and PJM. On the other hand, the prospect of PJM expanding into the Midwest raises some potential opportunities and might bring some positive benefits to the Midwest earlier than otherwise might be possible under the Midwest ISO. Therefore, the ICC requests additional safeguards to ensure that the RTO configuration in the Midwest will protect the public interest.

¹ *Alliance Companies, et al.*, 99 FERC ¶ 61,105 (2002), mimeo at 46, (*hereinafter*, “April 25 Order”).

The Alliance Companies' May 28 proposals would result in the Midwest electric transmission grid being divided between the Midwest ISO and PJM. Such an arrangement, if allowed by the Commission, could have significant negative effects on the development of both a competitive power market and transmission system operations in the Midwest. It will produce a sub-optimal RTO configuration that could well fail to achieve the public benefits that the Commission hoped to achieve through its RTO initiative. Moreover, the ICC is concerned that corporate holding company interests, rather than public utility interests or the public interest, may be driving voluntary RTO participation decisions.

Nevertheless, the prospect of PJM expanding into the Midwest does have some positive aspects. For example: (1) PJM is a more mature organization than the Midwest ISO and PJM has several years' experience successfully operating power markets; and (2) PJM may have a more concentrated focus on the concerns of retail access states (such as Illinois) because of the greater predominance of retail access programs in PJM's area.

Under these circumstances, the Commission must assert its authority to ensure that RTO configuration in the Midwest region will support the public interest. Proper RTO configuration cannot be accomplished merely by examining the RTO participation decisions of one or two of the Alliance Companies. Proper RTO configuration cannot be realized until the Commission examines the Midwest region as a whole and considers the associated market and system operations concerns.

The ICC recommends that the Commission immediately initiate a comprehensive investigation to discern the optimal location for RTO boundaries within the Eastern Interconnection. The initial focus of this investigation should be on the entire Midwest region and should encompass both economic and engineering aspects of optimal RTO configuration in a

manner to best achieve the Commission's goals set forth in Order No. 2000 to promote efficiency in wholesale electricity markets and to ensure that electricity consumers pay the lowest price possible for reliable service.² While far too much RTO development time and money has already been wasted in the Midwest pursuing voluntary RTO development (and the ICC wishes to see no further delay), six months invested in a purposeful study to discern proper RTO boundaries will be time well spent. After receiving the study report from the investigators, the Commission should act on the findings, in consultation with State Commissions, to direct RTO participation to obtain rational RTO boundaries. The ICC stands ready to assist in this endeavor so that proper RTO configuration in the Midwest can be accomplished in the most expeditious and efficient manner possible.

III. DISCUSSION

A. Potential negative effects of the Alliance Companies' May 28 proposals

1. The Alliance Companies' proposed RTO membership configuration would create a seam that could negatively affect the competitiveness of the Midwest electricity market

The Midwest region constitutes a natural market area for trading electricity. The Alliance Companies have both highly interconnected transmission systems and a long history of trading power among themselves. The same is true for the relationships between most of the Alliance Companies and many of the existing Midwest ISO companies. For example, Ameren is highly interconnected with both ComEd and IP. Also, First Energy has strong interconnections with AEP, and AEP is strongly interconnected with existing Midwest ISO members, including Cinergy. Considerable amounts of power are traded between these Midwest companies.

² *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285 (1999) (*hereinafter*, "Order No. 2000"), mimeo at 1.

Accordingly, the ICC is concerned that Commission approval of the Alliance Companies' current RTO participation proposals would result in the creation of a problematic seam directly through the heart of the Midwest electric market. The resulting seam would be intertwined between the Midwest ISO and PJM and could have a negative effect on the continued development of a wholesale power market in the Midwest. Such a seam could result in higher power costs due to inefficient dispatch, higher transaction costs due to the preservation of a rate pancake, reduced competition in generation services, and the increased potential for market power abuse.

The Commission acknowledged the importance of minimizing seams in Order 2000 when it determined that an RTO's boundary should encompass a highly interconnected portion of the grid, seamless trading areas and historical trading patterns.³ Given: (1) the highly interconnected nature of the Alliance Companies' transmission systems; (2) the high degree of interconnection between the Alliance Companies and many of the existing MISO companies; and (3) the long trading history among the Midwest companies, the current RTO participation proposals fail to satisfy the aforementioned Commission configuration principles. If the Commission is to realize its RTO goals while allowing two RTOs to operate in the Midwest region, then the effects of the seam that would exist between PJM and the Midwest ISO will have to be minimized to the same standard as if the seam did not exist.

The ICC acknowledges that the Commission has expressed a willingness to consider contract or coordination agreements as mechanisms to allow parties to comply with the Order 2000 RTO scope and configuration requirement.⁴ The intent of that requirement is to foster the creation of seamless super-regional trading areas. However, as the Commission is well aware,

³ *FERC Statutes and Regulations* ¶31,089 at 31,084-31,085 (1999).

⁴ *Id.*, at 31,083.

the Midwest has had an unsatisfactory experience with such inter-regional cooperative agreements (“IRCA”) as demonstrated by the IRCA between the Midwest ISO and the Alliance Companies that was ultimately rejected by the Commission in its order issued on December 20, 2001. Given this negative experience, the ICC is skeptical about the likelihood of a second attempt at a cooperation approach successfully resolving the problems that the seams between PJM and the Midwest ISO create within the Midwest market.

2. The Alliance Companies’ proposed RTO membership configuration would create a seam that could negatively affect efficient and reliable operations of the Midwest electricity market.

One of the primary objectives of the Commission’s RTO initiative is to improve coordinated transmission system operations so as to increase both system efficiency and reliability. Two aspects of improved system operations include an RTO’s ability to both internalize parallel path flows and to redispatch system generation to protect reliable delivery of electricity. To optimally perform these system operations responsibilities, an RTO needs to have a rational configuration.

The Commission recognized the impact that parallel path flows have on electricity markets in Order 2000. The Commission stated that creation of large RTOs that can internalize most, if not all, of the effects of parallel path flow problems through their scheduling and pricing actions, which will remove a significant impediment to the promotion of efficient competition in generation markets.⁵ Accordingly, the Commission specified that an RTO should develop and implement procedures to address parallel path flow issues within its region and with other regions.⁶

⁵ Order No. 2000, at 31,129.

⁶ *Id.*

The Commission also concluded that an RTO must have the authority to order redispatch of any generator connected to the transmission facilities that it operates to ensure reliability. Specifically, the RTO should have authority to order redispatch of generators to prevent or manage situations such as abnormal system conditions that require immediate action to prevent or limit equipment damage or the loss of facilities or supply that could adversely affect the reliability of the transmission system.⁷ Under the current Alliance Companies' proposals, PJM would stretch in a thin line from the east coast to the western border of Illinois. Similarly, the Midwest ISO would be composed of distant operating regions, that are at best, weakly electrically interconnected. Under these circumstances, both the Midwest ISO and PJM would be poorly configured RTOs. With such poor geographic configuration, the Midwest ISO and PJM would have fewer viable redispatch opportunities available to each RTO to fulfill their aforementioned operational obligations. For example, it is more likely for a nearby generator to be the best candidate for redispatch to relieve a transmission congestion problem arising in Illinois. However, under the two-RTO model, not all nearby generators will be available to the same RTO for redispatch.

As stated above, transmission systems in the Midwest are highly interconnected and have long trading histories. Given that AEP, ComEd, DP&L and IP intend to commit their transmission systems to PJM and that Ameren, First Energy and NIPSCO intend to join the Midwest ISO, the resulting geographic footprints of the Midwest ISO and PJM will become intertwined and strung out over a broad geography. As a result, the ICC is concerned that neither the Midwest ISO nor PJM will be able to properly internalize parallel path flows or efficiently order dispatch and redispatch of generators to ensure the reliability of the transmission systems

⁷ *Id.*, at 31,104.

that are under their control. The Commission should not accept the Alliance Companies' RTO participation proposals until these operational concerns can be resolved.

3. RTO configuration should not be driven by the corporate holding companies' optimizing decisions- rather it should be driven by both the public utility operating companies' customer interests and the public interest

Several of the Alliance Companies, in particular, ComEd, IP and AEP, have significant generation and marketing interests either situated internal to the company or in affiliates. The ICC is concerned that the Alliance Companies' RTO participation decisions may have been driven by these corporate generation and marketing interests, rather than the best interest of the utility operating companies' customers. Specifically, the ICC is concerned that the RTO participation decisions for ComEd and IP, for example, are being made with the intent to optimize Exelon and Dynegy's corporate interests rather than the interests of ComEd and IP's customers.

For example, the Midwest ISO operating companies generally have lower-cost generation than that which is currently available in PJM.⁸ By directing the ComEd and IP operating companies to join PJM, both Exelon and Dynegy will have simultaneously removed a barrier to selling power to the markets in the east while shielding their generation affiliates from competing generators in the Midwest ISO and farther west by establishing a seam on their western flank. Being on the east side of the seam not only shields Exelon and Dynegy's affiliates from competing generators in the west with respect to supplying load in Illinois, but also provides their affiliates with easier access to the east where higher-cost generators are located (and therefore, higher priced markets). The ICC is concerned that such an arrangement could result in

⁸ See, Energy Information Administration, Table 53. Estimated U.S. Electric Utility Average Revenue per Kilowatt-hour to Ultimate Consumers by Sector, Census Division, and State, December 2001 and 2000. See also, *Economic Assessment of RTO Policy*, Table 3.6 and Figure 3.1 (February, 2002)

increased energy prices for ComEd and IP's retail customers. The Commission should not accept the Alliance Companies' RTO proposals until this concern is satisfactorily addressed.

B. Potential positive aspects of the Alliance Companies' May 28 proposals

1. PJM is a more mature organization than the Midwest ISO and an experienced market operator

While the ICC requests appropriate safeguards discussed above, it also recognizes the potential positive aspects of the proposals. Compared to the Midwest ISO, PJM is a more mature organization with real experience in operating power markets. In particular, PJM has functioning real-time and day-ahead markets that facilitate liquidity, congestion management and market power mitigation measures. To date, the Midwest ISO does not operate any of these markets. The ICC believes that early, coherent wholesale market operation may benefit electricity consumers in Illinois.

2. PJM may have a more concentrated focus on the concerns of states with retail access programs

PJM's footprint covers numerous states such as Pennsylvania and parts of Ohio that, similar to Illinois, are currently implementing retail access programs. A history of cooperation with State Commissions and other programs designed to facilitate retail access programs will help foster an environment conducive to retail programs for states that are either currently involved in a retail program or those that are considering implementing a retail access program. On the other hand, the Midwest ISO covers significant territory in states that have not yet moved to retail access and are not likely to do so for a long time. Accordingly, the Midwest ISO's attention may not be as finely attuned to the concerns of states with retail access programs (such as Illinois) as PJM might be.

IV. CONCLUSION

The current record in this case does not provide adequate support to make definitive conclusions about precisely how to serve the public interest in the Midwest with respect to RTO configuration. However, the recent voluntary individual RTO participation decisions of the transmission-owning utilities in the Midwest have produced sub-optimal RTO configuration outcomes for both the Midwest ISO and PJM. In particular, the resulting RTO configuration outcomes threaten the development of efficient power markets and efficient and reliable transmission system operations in the Midwest. On the other hand, the prospect of PJM expanding into the Midwest raises some potential opportunities and may bring some positive benefits to the Midwest earlier than otherwise might be possible.

Under these circumstances, the Commission must assert its authority to ensure that RTO configuration in the Midwest region will support the public interest. Proper RTO configuration cannot be accomplished merely by examining the RTO participation decisions of one or two of the Alliance Companies. Rather, the Midwest region must be examined, as a whole, taking into consideration both market and system operations concerns, before proper RTO configuration can be realized.

The ICC recommends that the Commission immediately initiate its own investigation to discern the optimal location for RTO boundaries in the Midwest region. After receiving the study report from the investigators, the Commission should act on the findings to direct RTO

participation to obtain rational RTO boundaries. The ICC is prepared to assist the Commission in this endeavor.

Respectfully submitted,

/s/ Christine F. Ericson

Myra Karegianes
General Counsel and
Special Assistant Attorney General

Christine F. Ericson
Deputy Solicitor General

Illinois Commerce Commission
160 N. LaSalle St., Suite C-800
Chicago, IL 60601
(312) 814-3706

Dated: June 18, 2002

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the foregoing document of the Illinois Commerce Commission to be served this day upon each person designated on the official service list compiled by the Secretary in this proceeding, a copy of which is attached, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Chicago, Illinois, this 18th day of June, 2002.

/s/ Christine F. Ericson

Christine F. Ericson
Deputy Solicitor General
Illinois Commerce Commission

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THOMAS K HENDERSON
GENERAL COUNSEL
ALLEGHENY POWER
10435 DOWNSVILLE PIKE
HAGERSTOWN , MD 21740-1732

LEONARD W BELTER
WINSTON & STRAWN
1400 L ST NW
WASHINGTON, DC 20005-3509

DALE A LANDGREN
VICE PRESIDENT & CSO
AMERICAN TRANSMISSION COMPANY, LLC
PO BOX 47
WAUKESHA , WI 53187-0047

DEBORAH J HENRY
SENIOR ATTORNEY
ALLEGHENY POWER
800 CABIN HILL DR
GREENSBURG , PA 15601-1650

BECKY M. BRUNER
VINSON & ELKINS L.L.P
THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE NW
WASHINGTON, DC 20004-1008

PEGGY L ABBADINI
SEN. SYSTEM OPERATOR
CENTRAL ILLINOIS LIGHT COMPANY
300 LIBERTY ST
PEORIA , IL 61602-1400

CELIA Y DAVID
COMMONWEALTH EDISON COMPANY
20 S CLARK ST STE 500
CHICAGO, IL 60603-1832

DAVID A WHITELEY
AMEREN SERVICES COMPANY
PO BOX 66149
SAINT LOUIS, MO 63166-6149

RONALD JACKUPS
CINERGY SERVICES, INC.
139 E 4TH ST RM 670
CINCINNATI , OH 45202-4003

FRANK A. VENHUIZEN
NORTHERN INDIANA PUBLIC SERVICE COMPANY
801 E 86TH AVE
MERRILLVILLE, IN 46410-6271

ELIZABETH MOLER
EXELON CORPORATION
701 PENNSYLVANIA AVE NW STE 200
WASHINGTON, DC 20004-2608

BRUCE H. STAPLES
VICE PRESIDENT
DAIRYLAND POWER COOPERATIVE
PO BOX 817
LA CROSSE , WI 54602-0817

GWEN LUCIANO
FIRSTENERGY CORPORATION
76 S MAIN ST
AKRON, OH 44308-1812

GLENN B. ROSS MANAGER
VIRGINIA ELECTRIC AND POWER COMPANY
2400 GRAYLAND AVE
RICHMOND, VA 23220-5213

RAYMOND O. STURDY JR
DETROIT EDISON COMPANY
2000 2ND AVE
688 WCB
DETROIT , MI 48226-1203

J. CRAIG BAKER V. PRESIDENT
AMERICAN ELECTRIC POWER COMPANY
PO BOX 16631
COLUMBUS, OH 43216-6631

HERTZEL H. SHAMASH MANAGER
DAYTON POWER AND LIGHT COMPANY, THE
1065 WOODMAN DR
DAYTON, OH 45432-1423

MICHAEL F. GILDEA
DUKE ENERGY NORTH AMERICA, LLC
5400 WESTHEIMER CT
HOUSTON , TX 77056-5310

JAMES C FUHRMANN
ILLINOIS POWER COMPANY
500 S 27TH ST
DECATUR, IL 62521-2200

MICHAEL C. REGULINSKI ESQUIRE
VIRGINIA ELECTRIC AND POWER COMPANY
PO BOX 26666
RICHMOND, VA 23261-6666

JOHN P MATHIS
VICE PRESIDENT
EDISON MISSION ENERGY
555 12TH ST NW STE 640
WASHINGTON , DC 20004-1200

KEVIN F. DUFFY ESQUIRE
AMERICAN ELECTRIC POWER
PO BOX 16631
COLUMBUS, OH 43216-6631

RANDALL L PALMER
SENIOR ATTORNEY
ILLINOIS POWER COMPANY
500 S 27TH ST
DECATUR, IL 62521-2200

MICHELE BECK JENSEN
GREAT RIVER ENERGY
PO BOX 800
ELK RIVER , MN 55330-0800

JAMES R. DAUPHINAIS
BRUBAKER & ASSOCIATES
PO BOX 41200
SAINT LOUIS, MO 63141-4406

STANLEY F SZWED
VICE PRESIDENT
FIRSTENERGY CORPORATION
76 S MAIN ST
AKRON, OH 44308-1812

ERIC ROBERTSON
SENIOR PARTNER
LUEDERS, ROBERTSON & KONZEN
PO BOX 735
GRANITE CITY, IL 62040

ROBERT G MORK
DEPUTY CC FOR FEDERAL AFFAIRS
INDIANA GOVERNMENT CENTER NORTH
100 N SENATE AVE RM N501
INDIANAPOLIS, IN 46204-2200

DUANE S DAHLQUIST
BLUE RIDGE POWER AGENCY
5656 U S HIGHWAY 29 STE B1
BLAIRS, VA 24527-2430

JAMES D PEMBROKE ESQUIRE
DUNCAN, WEINBERG, GENZER & PEMBROKE,
P.C
1615 M ST NW STE 800
WASHINGTON, DC 20036-3213

ROBERT G TOWERS
CHESAPEAKE REGULATORY CONSULTANTS INC
6837 GUILFORD RD
CLARKSVILLE, MD 21029-1632

WILLIAM M LANGE
ASSISTANT GENERAL COUNSEL
CONSUMERS ENERGY COMPANY
1016 16TH ST NW STE 100
WASHINGTON, DC 20036-5703

PHILIP R MILLER
IMMDA PRESIDENT/ GENERAL MANGE
MISHAWAKA UTILITIES
PO BOX 363
MISHAWAKA, IN 46546-0363

ERIC A. EISEN
INDIANA UTILITY REGULATORY COMMISSION
10028 WOODHILL RD
BETHESDA , MD 20817-1218

JEFFREY L. LANDSMAN
ATTORNEY
WHEELER, VAN SICKLE & ANDERSON, S.C.
25 W MAIN ST STE 801
MADISON, WI 53703-3370

KRIS K WHEELER GENERAL COUNSEL
INDIANA UTILITY REGULATORY COMMISSION
INDIANA GOVERNMENT CENTER SOUTH
302 W WASHINGTON ST RM E306
INDIANAPOLIS, IN 46204-2738

MIKE HOLTSCLAW
INDIANAPOLIS POWER & LIGHT COMPANY
1230 W MORRIS ST
INDIANAPOLIS , IN 46221-1710

WILLIAM DERASMO
ATTORNEY
TROUTMAN SANDERS LLP
401 9TH ST NW STE 1000
WASHINGTON, DC 20004-2146

RICHARD G. RAFF
STAFF ATTN
KENTUCKY PUBLIC SERVICE COMMISSION
PO BOX 615
FRANKFORT , KY 40602-0615

MICHAEL S BEER
LG&E ENERGY CORPORATION
220 W MAIN ST
LOUISVILLE , KY 40202-1395

ANDRA SCHNABOLK
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L ST NW
WASHINGTON, DC 20037-1594

LINDA S PORTASIK
SENIOR COUNSEL
LG&E ENERGY CORPORATION
PO BOX 32030
LOUISVILLE, KY 40232-2030

DOUGLAS L CURRY
GENERAL COUNSEL
LINCOLN ELECTRIC SYSTEM
PO BOX 80869
LINCOLN , NE 68501-0869

CHRISTOPHER M FOLEY
COUNSEL
EDISON MISSION ENERGY
555 12TH ST NW - SUITE 640
WASHINGTON, DC 20004-1200

ROBERT Y HIRASUNA
LEONARD, STREET AND DEINARD
1701 PENNSYLVANIA AVE NW STE 900
WASHINGTON , DC 20006-5807

GARY L ZIMMERMAN
GENERAL MANAGER
MICHIGAN PUBLIC POWER AGENCY
809 CENTENNIAL WAY
LANSING , MI 48917-9277

ALAN I ROBBINS ESQUIRE
GKRSE
1500 K ST NW STE 330
WASHINGTON, DC 20005-1227

JOSEPH DEVITO
NRG ENERGY, INC.
901 MARQUETTE AVE STE 2300
MINNEAPOLIS , MN 55402-3265

NEIL HAMMER
SHORT-TERM MARKETER
MIDAMERICAN ENERGY COMPANY
4299 NW URBANDALE DR
URBANDALE , IA 50322-7916

A. ROBERT LASICH, JR.
SENIOR ATTORNEY
MIDAMERICAN ENERGY COMPANY
4299 NW URBANDALE DR
URBANDALE, IA 50322-7916

DON HOWARD
OHIO PUBLIC UTILITIES COMMISSION
180 E BROAD ST FL 6
COLUMBUS , OH 43215-3718

JACK P BIERL
GENERAL MANAGER
MICHIGAN SOUTH CENTRAL POWER AGENCY
PO BOX 62
LITCHFIELD , MI 49252-0062

PAUL D REISING
REISING & REISING
8706 LANCASTER RD
INDIANAPOLIS, IN 46260-1666

KELI LEAF
ASST. GENERAL COUNSEL
OKLAHOMA CORPORATION COMMISSION
2101 N LINCOLN BLVD
OKLAHOMA CITY , OK 73105-4904

STEPHEN G KOZEY
VICE PRESIDENT & GEN. COUNSEL
MIDWEST INDEP. TRANS. SYSTEM OPERATOR
701 CITY CENTER DR
CARMEL , IN 46032-7574

STEPHEN L TEICHLER
DUANE MORRIS LLP
SUITE 700
1667 K ST NW
WASHINGTON, DC 20006-1643

THOMAS G TEMPLE
VICE PRESIDENT
ORMET PRIMARY ALUMINUM CORPORATION
1233 MAIN ST STE 4000
WHEELING , WV 26003-2852

NANCY A CAMPBELL
FINANCIAL ANALYST
MINNESOTA DEPT OF COMMERCE
85 7TH PLACE EAST, SUITE 500
ST. PAUL , MN 55103-2106

THOMAS E FERGUSON
VICE PRESIDENT
MINNESOTA POWER, INC.
30 W SUPERIOR ST
DULUTH , MN 55802-2030

RICHARD A DROM
PJM INTERCONNECTION L.L.C.
VALLEY FORGE CORPORATE CENTER
955 JEFFERSON AVE
NORRISTOWN , PA 19403-2410

CARRIE HILL ALLEN
SENIOR ATTORNEY
901 F ST NW STE 800
WASHINGTON, DC 20004-1429

JARED W JOHNSON
LATHAM & WATKINS
555 11TH ST NW STE 1000
WASHINGTON, DC 20004-1300

PAULINE FOLEY
ASSISTANT GENERAL SOLICITOR
PSEG SERVICES CORPORATION
80 PARK PLAZA, T5G
NEWARK, NJ 07101

JOHN E MCCAFFREY
ATTORNEY
MORRISON & HECKER L.L.P.
1150 18TH STREET, N.W. - SUITE 800
WASHINGTON, DC 20036-3816

PAUL J. HALAS
NATIONAL GRID USA SERVICE COMPANY, INC.
25 RESEARCH DRIVE
WESTBOROUGH, MA 01582-0001

RODNEY C. H SCHEEL
VICE PRESIDENT
OTTER TAIL POWER COMPANY
215 S CASCADE ST
FERGUS FALLS , MN 56537-2801

GREGORY A HALE
NATIONAL GRID USA
25 RESEARCH DRIVE
WESTBOROUGH , MA 01582-0001

BRUCE W. NEELY
LEBOEUF, LAMB, GREENE & MACRAE, LLP
1875 CONNECTICUT AVE NW STE 1200
WASHINGTON, DC 20009-5715

TERRY R. BLACK
ATTORNEY
PUBLIC INTEREST ORGANIZATIONS
107 ROBERTS CT
ALEXANDRIA , VA 22314-4664

DAVID M DAHLBERG
NORTHWESTERN WISCONSIN ELECTRIC
COMPANY
PO BOX 9
GRANTSBURG , WI 54840-0009

PAUL K CONNOLLY JR.
LEBOEUF, LAMB, GREENE & MACRAE, LLP
260 FRANKLIN ST
BOSTON, MA 02110-3112

DAVID A LUDWIG
ASSISTANT GENERAL COUNSEL
PUBLIC SERVICE COMMISSION OF WISCONSIN
PO BOX 7854
MADISON, WI 53707-7854

SHAUN C MOHLER
ATTORNEY
BRICKFIELD, BURCHETTE, RITTS & STONE
1025 THOMAS JEFFERSON ST NW
EIGHTH FLOOR, WEST TOWER
WASHINGTON, 20007-5201

MICHAEL G BRIGGS
SENIOR COUNSEL
RELIANT ENERGY
801 PENNSYLVANIA AVE NW STE 620
WASHINGTON, DC 20004-2615

PATRICIA HARRELL
RELIANT ENERGY POWER GENERATION, INC.
PO BOX 286
HOUSTON, TX 77001-0286

THOMAS W MCNAMEE
ASSISTANT ATTORNEY GENERAL
OHIO PUBLIC UTILITIES COMMISSION
180 EAST BROAD STREET - 9TH FLOOR
COLUMBUS, OH 43215-3793

BILL HUTCHINSON
SOUTHERN ILLINOIS POWER COOPERATIVE
11543 LAKE OF EGYPT RD
MARION , IL 62959-8500

MARTY BLAKE
THE PRIME GROUP, L.L.C.
PO BOX 7469
LOUISVILLE , KY 40257-0469

BARRY COHEN
ASSISTANT CONSUMERS' COUNSEL
OHIO CONSUMERS' COUNSEL
10 W BROAD ST STE 1800
COLUMBUS, OH 43215-3420

ROBERT HEIDORN
DEPUTY GENERAL COUNSEL
SOUTHERN INDIANA GAS & ELECTRIC COMPANY
20 N.W. FOURTH STREET
EVANSVILLE , IN 47741-0001

HAROLD L HADLAND
NEBRASKA PUBLIC POWER DISTRICT
1414 15TH ST
COLUMBUS, NE 68601-5226

CLINTON A VINCE
SULLIVAN & WORCESTER LLP
1666 K ST NW STE 700
WASHINGTON, DC 20006-1208

AUDREY A ZIBELMAN
DIRECTOR
XCEL ENERGY SERVICES INC.
414 NICOLLET MALL FL 6
MINNEAPOLIS, MN 55401-1927

KENNETH G JAFFE ESQUIRE
SWIDLER BERLIN SHEREFF FRIEDMAN , LLP
3000 K ST NW
SUITE 300
WASHINGTON, DC 20007-5109

CRAIG A. GLAZER
MANAGER
PJM INTERCONNECTION L.L.C.
1200 G ST NW STE 600
WASHINGTON, DC 20005-3898

JOHN T WARD
SULLIVAN & WARD, PC
SUITE 3500
801 GRAND AVE
DES MOINES, IA 50309-8000

KENT M RAGSDALE MANAGING ATTORNEY
ALLIANT ENERGY CORPORATE SERVICES, INC.
PO BOX 351
CEDAR RAPIDS, IA 52406-0351

TAMARA L. LINDE
GENERAL SOLICITOR
PSEG SERVICES CORP.
80 PARK PLZ # T5G
NEWARK, NJ 07102-4106

STEPHEN M BRUCKNER
FRASER STRYKER LAW FIRM
409 S 17TH ST
409 S 17TH ST STE 500
OMAHA, NE 68102-2609

SUZAN M STEWART
MANAGING SENIOR ATTORNEY
MIDAMERICAN ENERGY COMPANY
PO BOX 778
SIOUX CITY, IA 51102-0778

BARRY S SPECTOR
WRIGHT & TALISMAN, P.C.
1200 G ST NW STE 600
WASHINGTON, DC 20005-3898

JAMES N HORWOOD ESQUIRE
SPIEGEL & MCDIARMID
1350 NEW YORK AVE NW STE 1100
WASHINGTON, DC 20005-4710

THOMAS L CUBBAGE
COVINGTON & BURLING
1201 PENNSYLVANIA AVE NW
WASHINGTON, DC 20004-2401

JOHN N. MOORE
PUBLIC INTEREST ORGANIZATIONS
35 E WACKER DR STE 1300
CHICAGO, IL 60601-2110

JAMES STEFFES
UBS AG
PO BOX 1188
HOUSTON , TX 77251-1188

RICK COONS
SR.VICE PRESIDENT
WABASH VALLEY POWER ASSOCIATION, INC.
PO BOX 24700
INDIANAPOLIS , IN 46224-0700

RICHARD E HITT
GENERAL COUNSEL
WEST VIRGINIA PUBLIC SERVICE COMMISSION
PO BOX 812
CHARLESTON , WV 25323-0812

JAMES R KELLER
DIRECTOR
WISCONSIN ELECTRIC POWER COMPANY
PO BOX 2046
MILWAUKEE , WI 53201-2046

RICHARD C KREUL VICE PRESIDENT
UTILICORP UNITED INC.
PO BOX 11739
KANSAS CITY , MO 64138-0239

SUZANNE WEBBER
MARKET SPECIALIST
WILLIAMS ENERGY MARKETING & TRADING CO.
PO BOX 2848
TULSA , OK 74101-2848

EXCETRAL K CALDWELL
SENIOR ATTORNEY
THE WILLIAMS COMPANIES, INC.
SUITE 4100, MS 41-3 - 1 WILLIAMS CTR
TULSA, OK 74172-0140

CHRISTINE C RYAN
BRICKFIELD, BURCHETTE, RITTS & STONE, PC
8TH FLOOR, WEST TOWER
1025 THOMAS JEFFERSON ST NW
WASHINGTON, DC 20007-5201

ARTHUR W ILER
ESQUIRE
WISCONSIN ELECTRIC POWER COMPANY
231 WEST MICHIGAN STREET
MILWAUKEE , WI 53290-0001

GARY D BACHMAN ESQUIRE
VAN NESS FELDMAN P.C.
1050 THOMAS JEFFERSON ST NW
WASHINGTON, DC 20007-3837

WHITFIELD A RUSSELL
WHITFIELD RUSSELL ASSOCIATES
SUITE 850
1225 EYE ST NW
WASHINGTON, DC 20005-3914

STEPHEN J VIDETO
GENERAL COUNSEL
WOLVERINE POWER SUPPLY COOPERATIVE, INC.
10125 W WATERGATE RD
CADILLAC , MI 49601-8458

DAVID A. VOGES
MICHIGAN PUBLIC SERVICE COMMISSION
6545 MERCANTILE WAY STE 15
LANSING , MI 48911-5984

STEVEN A WEISS
MIDAMERICAN ENERGY COMPANY
PO BOX 657
DES MOINES, IA 50303-0657

DAVID B HENNEN
AMEREN SERVICES COMPANY
PO BOX 66149
SAINT LOUIS, MO 63166-6149

EDWARD N RIZER
DAYTON POWER AND LIGHT COMPANY, THE
PO BOX 1819
DAYTON, OH 45401-1819

STEVEN L GAARDE
DIRECTOR
CONSUMERS ENERGY COMPANY
212 W MICHIGAN AVE RM H-440A
JACKSON , MI 49201-2236

JAMES P JOHNSON
XCEL ENERGY SERVICES INC.
800 NICOLLET MALL STE 2900
SUITE 2900
MINNEAPOLIS, MN 55402-2024

MIKE MOONEY
HOOSIER ENERGY RURAL ELECTRIC COOP. INC.
PO BOX 908
BLOOMINGTON , IN 47402-0908

ROBERT A.W. STRONG
CLARK HILL P.L.C.
255 S OLD WOODWARD AVE FL 3
BIRMINGHAM, MI 48009-6182

CHRISTINE F. ERICSON
MYRA KAREGIANES
GENERAL COUNSEL
ILLINOIS COMMERCE COMMISSION
160 N LASALLE ST STE C800
CHICAGO , IL 60601-3113

RANDY RISMILLER
ILLINOIS COMMERCE COMMISSION
527 EAST CAPITOL AVENUE
SPRINGFIELD, IL 62701